

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARY A. DEAN)	
Claimant)	
VS.)	
)	Docket Nos. 1,002,975 and
BOEING COMPANY)	1,004,742
Respondent)	
AND)	
)	
KEMPER INSURANCE)	
Insurance Carrier)	

ORDER

Claimant appeals Administrative Law Judge John D. Clark's August 8, 2002, preliminary hearing Order.

ISSUES

The Administrative Law Judge (ALJ) denied claimant's request for authorized medical treatment for both alleged left and right knee work-related injuries. The ALJ found the claimant failed to prove the knee injuries were related to her employment. Also, the ALJ found that claimant failed to prove that she gave the respondent timely notice of the work-related accident and injuries.

Claimant contends she proved through her testimony and the medical treatment records admitted into the preliminary hearing that she initially injured her left knee at work and then suffered symptoms in her right knee as a result of either overcompensating for her left knee injury or injuring her right knee while walking on the concrete at work. Claimant also argues she gave respondent timely notice of the left knee injury in March 2002 after her first surgery was performed on her left knee but before the second left knee surgery was performed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Board makes the following findings and conclusions:

At the time of the August 8, 2002, preliminary hearing, claimant was a 17 year employee of respondent. She works as a material processor which requires her to be on her feet one-half of her work shift and sits at a table and rides a cart the other half of the work shift.

Claimant filed an Application for Hearing on April 8, 2002, claiming injuries to her right hand and left knee as a result of repetitive work activities from March 11, 2002, and each and every day thereafter. That claim was assigned Docket No. 1,002,975. On July 1, 2002, claimant filed an Application for Hearing claiming a right knee injury from working on concrete from May 31, 2002, and each and every day thereafter. That claim was assigned Docket No. 1,004,742.

The ALJ's August 8, 2002, preliminary hearing Order includes both docket numbers. But the preliminary hearing Order seems only to address the alleged left knee injury. Both of the parties, however, in their briefs to the Board argue the denial of preliminary hearing benefits for both the left and right knee injuries. Both parties also agree that the respondent admits the compensability of claimant's right hand claim as the respondent is providing medical treatment for that injury. Thus, the right hand claim is not part of this preliminary hearing Order.

Claimant alleges she initially injured her left knee at work sometime in the summer of 2001. Claimant admits she did not notify respondent of the 2001 left knee injury. She testified she failed to notify the respondent of that accident because she was, at that time, dealing with other unrelated issues concerning saving her job.

Claimant first sought medical treatment on her own sometime in September 2001. She eventually came under the care and treatment of orthopedic surgeon David J. Prohaska, M.D.

She saw Dr. Prohaska on January 3, 2002. Dr. Prohaska's January 3, 2002, medical record reports a history from claimant of injuring her left knee on August 1, 2001, while riding a bicycle. There was no history of claimant injuring her knee while working for the respondent. According to claimant, she did provide Dr. Prohaska with a history of first injuring her left knee at work and then aggravating that work-related injury while riding the bicycle.

After reviewing an MRI examination of claimant's left knee, Dr. Prohaska diagnosed claimant with left knee lateral meniscus tear and possible medial meniscus tear. Claimant had complaints of pain of both the lateral and medial portions of the left knee.

On January 15, 2002, claimant underwent surgery with Dr. Prohaska performing a left partial lateral meniscectomy. The doctor also found claimant had an undersurface

medial meniscus tear. But he did not repair this tear because the tear did not extend into the joint and was felt to be stable.

After surgery, claimant's lateral left knee pain resolved. But she returned to Dr. Prohaska on March 25, 2002, with continuing complaints of medial left knee pain. Dr. Prohaska, however, released claimant to return to her regular employment. In a letter dated May 20, 2002, to the respondent's workers compensation insurance carrier, Dr. Prohaska opined that claimant's medial meniscus tear occurred before her alleged work-related injury.

Because she continued to have left medial knee pain, claimant reported the pain to respondent's Central Medical facility. Instead of returning claimant to Dr. Prohaska, respondent referred claimant to orthopedic surgeon Kenneth A. Jansson, M.D.

Dr. Jansson saw claimant on April 10, 2002. Claimant provided Dr. Jansson with a history of the August bicycle accident and also claimed an exacerbation of that left knee injury from working on the concrete floors while employed by the respondent. Dr. Jansson determined claimant's problem was the left medial meniscus tear.

On April 25, 2002, Dr. Jansson performed a partial medial menisectomy of claimant's left knee. Post-injury claimant was placed in a physical therapy program. Dr. Jansson followed claimant until June 26, 2002, when claimant was openly belligerent in his office and the doctor decided he did not care to treat her any further.

Claimant contends she first injured her left knee in a work-related accident in the summer of 2001. She admits she did not give respondent timely notice of that accidental injury. But she goes on to claim that she gave a history of that accidental injury at work to Dr. Prohaska. Additionally, she admits that Dr. Prohaska's medical care and treatment was paid under her health insurance policy with respondent and she did not make a claim for workers compensation benefits. Claimant is not requesting for Dr. Prohaska's care and treatment be paid as a worker's compensation claim. What claimant is requesting is that Dr. Jansson's medical care and treatment be paid as authorized medical under the Workers Compensation Act. Claimant argues she proved through her testimony that the medical treatment she received through Dr. Jansson was the result of her day-to-day work activities aggravating her left knee condition following her January 15, 2002, left knee surgery.

The Board concludes that Dr. Prohaska's medical records are persuasive and prove that at the time he saw claimant on January 3, 2002, claimant had pain in both the lateral and medial portions of her left knee. After Dr. Prohaska's January 15, 2002, surgery, claimant returned to Dr. Prohaska on March 25, 2002, with continuing medial pain of the left knee. Dr. Prohaska also found the medial meniscus torn during the January 15, 2002, surgery. Thus, the Board finds the medial meniscus had either suffered a tear in the

summer of 2001 work-related accident as alleged by the claimant or the tear occurred during the August 1, 2002, bicycle accident. The Board, therefore, finds that claimant should be denied the requested preliminary hearing benefits because she failed to give respondent timely notice of the 2001 alleged work-related accidental injury and the bicycle accident was a non-work-related incident.

In regard to claimant's alleged right knee accidental injury, the Board finds claimant's testimony alone is not persuasive because the medical treatment records do not indicate that claimant had any right knee complaints, there was no medical evidence to prove claimant actually suffered a right knee injury and there was no medical evidence relating the right knee injury to her work activities.

WHEREFORE, the Board finds that ALJ John D. Clark's August 8, 2002, preliminary hearing Order, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 2002.

BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant
Eric K. Kuhn, Attorney for Respondent
John D. Clark, Administrative Law Judge
Director, Division of Workers Compensation